

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Michael Christopher MARTIN, et al. Conf. No. 4861
Appln. No. : 09/846,568 Group Art unit: 2154
Filed : May 1, 2001 Examiner: J. Chang
For : **METHOD FOR ADAPTING AN INTERNET WEB SERVER TO
SHORT-TERM CHANGES IN DEMAND**

REPLY BRIEF UNDER 37 C.F.R. 41.41(a)(1)

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
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Sir:

This Reply Brief is in response to the Examiner's Answer dated February 20, 2008, the period for reply extending until April 21, 2008 (April 20, 2008 being a Sunday).

The Examiner maintains the grounds of rejection advanced in the final rejection of claims 1-20, and provides arguments in support thereof.

Appellant notes this Reply Brief is being filed under 37 C.F.R. 41.41(a)(1) and is directed to the arguments presented in the Examiner's Answer, and therefore must be entered unless the final rejection is withdrawn in response to the instant Reply Brief. With regard to this Reply Brief, Appellant notes it is addressing points made in the Examiner's Answer and not repeating the arguments set forth in the Appeal Brief.

A copy of *Ex parte HADDAD* is attached hereto.

POINTS OF ARGUMENT

First Issue

On pages 4-6 of the Examiner's Answer, the Examiner again incorrectly lists the claims which are rejected as obvious over SARUKKAI and GLANCE. Although the Examiner lists claims 1 and 4-11 as being rejected over these documents, claims 12 and 15, 16, 18 and 19 are also discussed in the rejection, and are assumed to also be rejected over these documents.

Second Issue

On pages 10-12 of the Examiner's Answer, the Examiner responds to Appellant's arguments regarding the obviousness rejection of claim 1 over SARUKKAI and GLANCE asserting that under a broad reasonable interpretation, he can interpret "tracing logs of client sessions" of SARUKKAI as associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers.

Appellant disagrees. Appellant reminds the Examiner that the "broadest reasonable interpretation" standard must be one that "would be understood by one of ordinary skill in the art, taking into consideration the description of the applicant's specification. *In re Morris*, 127 F.3D 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)". See page 3 of the attached non-precedential decision *Ex parte HADDAD*. Appellant has clearly recited associating session tracking objects with browsers that access a web server, wherein the session

tracking objects include identifications of web pages requested by the browsers.

As the Examiner will note from page 5, lines 3-16 of the instant specification, session tracking objects constitute information about the requests for web pages by the browsers and this information identifies each of the browsers. This distinction is not without a difference because the instant invention enables session tracking of the session objects in order to detect changes in demand more rapidly.

In contrast to the invention, SARUKKAI relates to document caching with a server (see col. 1, lines 6-9). The disclosed system is capable of "monitoring the number of documents requested by a client in a current session, placing a document requested by the client in a file cache according to a caching algorithm that is based, at least in part, on the number of documents requested by the client in the current session, and accessing the document in the file cache when the document is requested subsequently by the client. The wide area network is typically the Internet" (see col. 2, lines 14-21). Thus, SARUKKAI stores the document itself into the cache based on the probability that it will be requested (see col. 8, lines 32-43).

Third Issue

On page 11 of the Examiner's Answer, the Examiner also argues that SARUKKAI teaches to use cookies at col. 8, lines 20-28 which can also be interpreted as associating session tracking objects with browsers that access a

web server, wherein the session tracking objects include identifications of web pages requested by the browsers.

Appellant disagrees. Although SARUKKAI does indeed teach to use cookies at col. 8, lines 20-28, the noted language of SARUKKAI explains that the cookies are used for client session depth, and not in the context of associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers.

Fourth Issue

On page 12 of the Examiner's Answer, the Examiner alternatively argues that GLANCE teaches to use module 14 which can also be interpreted as associating session tracking objects.

This argument was not asserted in the Final rejection. Regardless, Appellant notes that the value module 14 of GLANCE has not been shown to disclose or suggest associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers.

Appellant again reminds the Examiner that the "broadest reasonable interpretation" standard must be one that "would be understood by one of ordinary skill in the art, taking into consideration the description of the applicant's specification. *In re Morris*, 127 F.3D 1048, 1054-55, 44 USPQ2d 1023, 1027-28

(Fed. Cir. 1997)". See page 3 of the attached non-precedential decision *Ex parte HADDAD*. As the Examiner will note from page 5, lines 3-16 of the instant specification, session tracking objects constitute information about the requests for web pages by the browsers and this information identifies each of the browsers.

Fifth Issue

On page 12 of the Examiner's Answer, the Examiner acknowledges that SARUKKAI fails to teach that the session tracking objects include identifications of web pages requested by the browsers, but asserts that GLANCE teaches this feature because it discloses that module 14 "analyzes the log of client accesses to the Internet 30 web sites" and uses ranking "as a measure of the value of a site and/or any URL.associated with the site."

Appellant disagrees. Appellant again reminds the Examiner that the "broadest reasonable interpretation" standard must be one that "would be understood by one of ordinary skill in the art, taking into consideration the description of the applicant's specification. *In re Morris*, 127 F.3D 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)". See page 3 of the attached non-precedential decision *Ex parte HADDAD*. As the Examiner will note from page 5, lines 3-16 of the instant specification, session tracking objects constitute information about the requests for web pages by the browsers and this information identifies each of the browsers. Such language is not the same as

analyzing the log of client accesses to the Internet 30 web sites and using ranking as a measure of the value of a site and/or any URL associated with the site.

GLANCE merely discloses a system and method of caching based on a recommender system. The disclosed system employees a democratic caching generally shown by reference numeral 10. A recommender system 16 provides value information pertaining to items to be stored in cache 24 based on user input (col. 4, liens 43-53) that includes implicit site recommendations (col. 5, lines 24-55) and explicit URL recommendations (col. 5, lines 65 et seq.). GLANCE, like SARUKKAI, simply does not disclose or suggest associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers. GLANCE does not even determine caching priorities for the server by analyzing the identifications of web pages requested by the browsers.

Sixth Issue

On page 14 of the Examiner's Answer, the Examiner explains that GLANCE is only relied upon to teach that the session tracking objects include identifications of web pages requested by the browsers which is allegedly taught at col. 4, lines 64-67, col. 5, lines 43-55, and col. 3, lines 10-29.

Appellant disagrees. Col. 4, lines 64-67 merely discusses how the value module 14 provides "statistical information". Furthermore, col. 5, lines 43-55

merely discusses how the module 14 analyzes the log of client accesses to the Internet 30 web sites and uses ranking as a measure of the value of a site and/or any URL associated with the site. Finally, col. 3, lines 10-29 merely discusses how web-based documents or web pages can be accessed. None of the noted passages of GLANCE have been clearly shown to teach that the session tracking objects include identifications of web pages requested by the browsers.

Seventh Issue

On page 15 of the Examiner's Answer, the Examiner explains that GLANCE does in fact determine caching priorities for the server by analyzing the identifications of web pages requested by the browsers.

Appellant disagrees. Again, utilizing a module 14 to analyze the log of client accesses to the Internet 30 web sites and uses ranking as a measure of the value of a site and/or any URL associated with the site is simply not the same as determining caching priorities for the server by analyzing the identifications of web pages requested by the browsers.

Eighth Issue

The Examiner makes similar arguments with regard to claims 9 and 20 which Appellant traverses for similar reasons.

Ninth Issue

On page 24 of the Examiner's Answer, the Examiner explains that he can

fail to accord the preamble of claim 20.

Appellant disagrees. The language "a method for adapting to change in a demand on a web server" is also recited in the body of claim 22 as "wherein method ensures that a web site adapts to changes in demand". As such, the body of claim 20 breathes life and meaning into the claim preamble and therefore cannot be ignored.

Nor is the Examiner correct that the noted language mere discusses the noted language as being "adapted to change in demand ..." The wherein language at the end of claim 20 is not recited in intended use format and specifically states "wherein the method ensures that a web site adapts to changes in demand".

Tenth Issue

Throughout the Examiner's Answer, the Examiner makes various assertions which appear to be based on an argument of inherency. Appellant submits that such assertions are not consistent with MPEP 2112, which specifically states, in part:

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product

balloon was biaxially oriented. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." *Id.* at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

The Examiner has provided no basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

CONCLUSION

Accordingly, in view of the above-noted arguments (as well as those already of record), the Board is respectfully requested to reverse the Examiner's decision to finally reject claims 1-20 under 35 U.S.C. §103. Furthermore, the application should be remanded to the Examiner for withdrawal of the rejections over the applied documents and an early allowance of all claims on appeal should be provided. The Commissioner is hereby authorized to charge any fees necessary for consideration of this paper to deposit account No. 09-0457.

Respectfully submitted,
Michael Christopher MARTIN, et al.



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The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NADIM HADDAD, CHARLES N. ALCORN,
JONATHAN MAIMON, LEONARD R. ROCKETT
and SCOTT DOYLE

Appeal No. 2003-2013
Application No. 09/491,230

ON BRIEF

Before KIMLIN, JEFFREY T. SMITH and PAWLIKOWSKI, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6-19.

Claim 6 is illustrative:

6. A resistor, comprising:

a first passivation layer overlying a semiconductor substrate having a plurality of transistors;

a first bottom contact and a second bottom contact formed through said first passivation layer at a first contact location and a second contact location, respectively;

a resistive film formed over said first passivation layer to serve as a resistor, wherein said resistive film has a first end and a second end;

a first top contact connecting said first bottom contact to said first end of said resistive film; and

a second top contact connecting said second bottom contact to said second end of said resistive film.

In the rejection of the appealed claims, the examiner relies upon the following reference:

Matthews	5,182,225	Jan. 26, 1993
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Appellants' claimed invention is directed to a resistor wherein first and second top contacts connect first and second bottom contacts to first and second ends of a resistive film.

Appealed claims 6, 7, 11, 12 and 16-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Matthews. Claims 8-10 and 13-15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Matthews.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we concur with appellants that the prior art cited by the examiner neither describes the claimed invention within the meaning of § 102 nor

renders it obvious within the meaning of § 103. Accordingly, we will not sustain the examiner's rejections.

The basis of the examiner's rejections over Matthews is finding that the gate and source regions of Matthews meet the requirements for the claimed first and second bottom contacts, respectively. In other words, it is the examiner's position that the gate and source of Matthews are contacts which meet the requirements of the presently claimed first and second bottom contacts. Appellants, on the other hand, contend that when one of ordinary skill in the art interprets the claim language in light of the specification, such a skilled artisan would not read the first and second bottom contacts as including the gate and source regions of Matthews.

We must acknowledge that there is a certain appeal in the examiner's position. Manifestly, the source and gate of Matthews are made of a conductive material and serve to pass current from one body to another, as urged by the examiner. However, it is well settled that claim language is given its broadest reasonable meaning during prosecution as it would be understood by one of ordinary skill in the art, taking into consideration the description of the applicant's specification. In re Morris,

127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). In the present case, appellants' specification describes that the contacts, or studs, are made from tungsten, aluminum, or copper, and the specification also discloses other areas of the device as gate and source regions (14a, 14b and 17a, 17b, respectively). Hence, we find it reasonable to conclude that one of ordinary skill in the art would not interpret the claimed first and second bottom contacts as inclusive of gate and source regions and, therefore, it is our opinion that the gate and source regions of Matthews are not a description of the claimed bottom contacts within the meaning of § 102. In our view, appellants' arguments during prosecution establish, via file wrapper estoppel, that the claimed first and second bottom contacts do not encompass gate and source regions.

As for the examiner's § 103 rejection, the examiner has not presented a rationale why it would have been obvious for one of ordinary skill in the art to modify Matthews to incorporate the claimed first and second bottom contacts in addition to the gate and source regions.

Appeal No. 2003-2013
Application No. 09/491,230

In conclusion, based on the foregoing, the examiner's
decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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JEFFREY T. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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BEVERLY PAWLIKOWSKI)	
Administrative Patent Judge)	

ECK:clm

Appeal No. 2003-2013
Application No. 09/491,230

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